IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11198 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAFIK RASID SHAIKH @AKRAM CHA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11198 of 2003

MR AR SHAIKH for Petitioner No. 1

MR RM CHAUHAN Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 14/10/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Surat city on

17.5.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds served upon the petitioner and placed on record denote that the detaining authority took into consideration registration of three offences against the petitioner on 24.12.2000, 1.9.2000 and 19.11.2001 under sec. 457 and 380 of IPC for the theft committed by the petitioner. The detaining authority also took into consideration two in-camera statements as recorded by the sponsoring authority on 6.5.2003 and 7.5.2003 as verified by the detaining authority on 14.5.2003. Both the statements revealed the incidents occurred on 28.12.2002 and on 11.1.2003. From the above material, the order impugned came to be passed.

Ld. advocate Mr Kamen Shukla for Mr AR Shaikh for the petitioner and ld. AGP Ms. Panchal for the respondents were heard at length.

Out of various grounds urged on behalf of the petitioner and controverted by ld. AGP, from the rival contentions, it appears that the matter can be disposed of on the ground whether there is delay in passing the impugned order. The chronology as relied upon by the detaining authority date-wise emerges from 24.12.2000, 1.9.2000 and 18.11.2001. These are the dates on which the crimes came to be registered against the petitioner. The unreported incidents are dated 28.12.2002 and 11.1.2003. However, this fact could be collected by the sponsoring authority on 6.5.2003 and 7.5.2003 as verified by the detaining authority on 14.5.2003. The order in question came to be passed on 17.5.2003, therefore, even if we take the date of registration of last offence which is dated 18.11.2001 and even if the last date of unreported incident i.e. 11.1.2003 is taken into consideration than also the order came to be passed only on 7.5.2003. True, it is that the in-camera statements came to be recorded only on 6.5.2003 and 7.5.2003, that itself is a delay in process of passing the order of detention. Undoubtedly, there is a delay in passing the order against the petitioner vitiates further detention of the petitioner. The crux of the detention law is proximity between objectional activities and passing of the order. If any delay is caused snapping live link between the objectional activity and the passing of the order than the further detention of the detenu becomes bad in law on account of personal liberty of a citizen as guaranteed under the Constitution of India. The facts of

this case are, therefore, squarely covered by a decision of this court in the matter of Elesh Nandubhai Patel vs. Commissioner of POlice Ahmedabad city, as reported in 1997(1) GLH P. 381 and the decision of the Apex Court in the matter of Pradeep N. Paturkar vs. S. Rammurthi as reported in AIR 1994 SC 656. In view of the above, the order impugned in this petition is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 17.5.2003 by the Police Commissioner, Ahmedabad city, under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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